

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and the parties' arguments, the Board finds and concludes:

1. The appeal should be dismissed as the Board does not have the jurisdiction to review this preliminary hearing issue. The Board has addressed this issue on numerous occasions and has consistently so held.

2. This is an appeal from a preliminary hearing order. Accordingly, the Board does not have jurisdiction to review every alleged error in fact or in law. In preliminary hearing matters, the Board's jurisdiction is specifically limited by K.S.A. 44-534a(a)(2) to the following issues, which are deemed jurisdictional:

- (1) Did the worker sustain an accidental injury?
- (2) Did the worker's accidental injury arise out of and in the course of employment?
- (3) Did the worker provide the employer with both timely notice of the accidental injury and timely written claim?
- (4) Are there any defenses that will defeat the compensability of the claim?

The Workers Compensation Act provides, in part:

. . . A finding with regard to a disputed issue of whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board. Such review by the board shall not be subject to judicial review. . . . Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.¹

Additionally, the Board may review other preliminary hearing awards when a judge exceeds his or her jurisdiction. That authority is from K.S.A. 44-551(b)(2)(A), which provides, in part:

¹ K.S.A. 1998 Supp. 44-534a.

If an administrative law judge has entered a preliminary award under K.S.A. 44-534a and amendments thereto, a review by the board shall not be conducted under this section unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing. . . .²

The administrative law judges have the jurisdiction at preliminary hearings to award medical compensation.³ The questions whether the respondent and its insurance carrier have refused and neglected to provide medical care⁴ or whether the facts comprise a request for the change of a treating physician do not contravene the judge's jurisdiction. The judge has the jurisdiction to decide those questions rightly or wrongly.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.⁵

WHEREFORE, the Board dismisses the appeal, leaving the December 11, 2001 Order in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of January 2002.

BOARD MEMBER

c: Stanley E. Oyler, Attorney for Claimant
Anton C. Andersen, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

² K.S.A. 1998 Supp. 44-551.

³ K.S.A. 1998 Supp. 44-534a(a)(2).

⁴ See K.S.A. 1998 Supp. 44-510(b), which provides that employees may obtain their own medical services when the employer refuses or neglects to provide them.

⁵ *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).